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HIGH COURT OF CHHATTISGARH BILASPUR

CRIMINAL APPEAL NO. 588 OF 2005

APPELLANT Santosh Rai

VERSUS

RESPONDENT State of Chhattisgarh

JUDGMENT

POST ON 25th SEPTEMBER 2007

Sd/-
DHIRENDRA MISHRA
Judge

(29)

HIGH COURT OF CHHATTISGARH BILASPUR

CRIMINAL APPEAL NO. 588 OF 2005

APPELLANT 1) Santosh Rai S/o Lakhan Ram Bangali, Aged about 35 years, R/o Kalaka Para, Ward No. 8, PS-Dongargarh, Distt. Rajnandgaon (CG)

VERSUS

RESPONDENT State of Chhattisgarh Through Police Station Dongargarh Distt. Rajnandgaon (CG)

Present:

Mr. S.C.Verma, counsel for the appellant.

Mr. G.K. Beriwal, Dy. A.G. for the State.

JUDGMENT

(Delivered on 25th September 2007)

Dhirendra Mishra, J

This appeal is directed against the judgment of conviction and order of sentence dated 9.2.2005 passed in Special Case No. 84/04 whereby learned Special Judge, Rajnandgaon has convicted the appellant under Sections 376, 452, 342 of Indian Penal Code and sentenced to undergo RI for seven years, pay a fine of Rs.500/- and in default to undergo additional RI for three months, RI for three years, pay a fine of Rs.250/- and in default to undergo additional RI for one month, and to undergo RI for six months, respectively. All the sentences have been directed to run concurrently.

2. Case of the prosecution, in brief, is that Rukmanibai Gond lodged a written report on 22.5.2004 with Superintendent of Police, Rajnandgaon alleging therein that on 18.5.2005 her daughter was alone in the house when the accused entered in her house after scaling the wall, wrapped a *dupatta* over her mouth and eyes, tied her hands & legs with the rope, which he had brought with him and thereafter raped her after undressing her. After committing the offence, he untied the rope and ran away.

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Her daughter narrated the incident to neighbour Fagnibai. On 19.5.2004 after she heard about it at Dongargarh, she along with her sister and daughter went to the house of accused to enquire, whereupon he started quarrelling. However, they did not lodge report on the fear that the whole locality will be defamed. On 20.5.2004 wife of the appellant and her two sisters-in-law beat her daughter and lodged a false report against Lekhsingh, brother of the prosecutrix, in Police Station Dongargarh. When they went to lodge report on 21.5.2004 in the police station, their report was not registered. On 22.5.2004 itself the Superintendent of Police directed T.I., S.H.O., Dongargarh to register the offence and investigate the matter, whereupon First Information Report of ExP/9 was registered on 24.5.2004 on the basis of letter produced by the complainant. The prosecutrix was sent for medical examination to District Hospital, Rajnandgaon where Dr. Sushma Kumare (PW-7) examined her and gave her report of Ex.P/8. Vaginal slides of the prosecutrix was taken into possession vide Ex.P/5 and the same was sent for chemical examination to Forensic Science Laboratory, Raipur and report of F.S.L. is Ex.P/11. Caste certificate (Ex.P/4) of the prosecutrix was collected. After completing investigation charge sheet was filed in the Court of Chief Judicial Magistrate, Kawardha which was received after committal by the Special Court for trial.

3. Eight witnesses were examined by the prosecution during trial. Thereafter, statement of the accused was recorded in which he denied the circumstances appearing against him and pleaded that he is innocent, he has been falsely implicated due to animosity and the witnesses are lying as they are interested witnesses. The trial Court, however, convicted and sentenced the accused as mentioned in paragraph 1 of this judgment.

4. Learned counsel for the appellant submitted that from perusal of statements of PW-1 Rukmanibai and PW-2 Damyantinbai, mother and elder sister of mother of the prosecutrix, respectively, it is evident that there was some quarrel

between the wife and sisters of the appellant and the prosecutrix, as a result of which a report was lodged in the police station by the accused persons and the same was compromised after the incident on 21st May. Only after the said compromise a false report was lodged on 22nd May regarding rape before the Superintendent of Police and two days thereafter the complaint submitted to the S.P. was produced in the police station in original. Version of the prosecutrix is not corroborated by the medical evidence as no injury was found on her person and report of the F.S.L. is also negative. The witnesses examined by the prosecution are highly interested witnesses whereas no independent witnesses, though available, has been examined. PW-2 Damyantinbai had gone to Puri on the date of incident at 3.30 p.m. as stated by the defence witness Anand, which finds support from the statement of Rukmanibai (PW-1), mother of the prosecutrix. However, this important aspect has been totally ignored by the Court below.

5. On the other hand, learned counsel for the State/respondent supported impugned judgment of the trial Court and submitted that the prosecutrix has categorically narrated the manner in which the offence was committed. The defence could not elicit anything on her cross-examination which cast any doubt on the version given by her. Her statement is corroborated by the statement of Damyantinbai. There is convincing explanation given by the witnesses for delay in lodging the report and there is no illegality or infirmity in the impugned judgment.

6. I have heard learned counsel for the parties and have perused the material available on record including the impugned judgment.

7. Conviction of the appellant is based on statements of the prosecutrix, her mother PW-1 Rukmani, elder sister of her mother PW-2 Damyantinbai.

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8. PW-5 prosecutrix has stated that she recognizes the accused, she was sleeping in her house when the accused scaling wall of the backside came to her house, woke her up, took her to another room, tied her hands & legs, gagged her mouth and committed rape after undressing her and thereafter, untied her and fled from there. She narrated the incident to her neighbour Fagnibai. Rumkanibai is her mother. Her statement was recorded with the help of deaf & dumb teacher Satish Kumar Garg as she is hard of hearing and stammers while speaking. In cross-examination she has stated that her aunt, sister and brother reside in her house. Her mother Rukmanibai goes to work. When the accused came, Damyantinbai was not present in the house, even Anita was not there. The accused had bitten her hand, she could not shout as her mouth was gagged. Her mother resides at Supela. It is incorrect to say that on the date of incident she had gone to some other village by train. She stated that she had not gone, she was at home. She has denied the suggestion that her brother Lekhram had eveteased sister of the accused whereupon Durga and sister of the accused lodged a report against him.

9. PW-2 Damyantinbai, in whose house the prosecutrix resides, has stated that on the date of incident she had gone on duty leaving prosecutrix and her younger daughter, aged about 9 years, at home. She returned from duty at 7.30 p.m. when prosecutrix narrated the incident. She also narrated the incident to Fagnibai and Jainibai. She sent a message to Rukmanibai at Bhilai whereupon she came to Dongargarh. They reprimanded Santosh for his act, on which he started quarrelling. They did not lodge report as the persons residing in the vicinity forbade them that the daughter would be defamed. On the following day the wife and the sisters of the appellant came and beat the prosecutrix. When they were going to lodge report, they were stopped by the neighbours and informed that accused persons have gone to lodge report in the police station and when the police personnel will come for enquiry, then inform them about the incident. However, when police party did not come next day for enquiry, she along with her

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sister Rukmanibai and the prosecutrix went to Police Station Dongargarh for lodging report, but their report was not registered. Thereafter, they lodged a written report in Police Station Rajnandgaon. In cross-examination she has admitted that sister of the accused made allegation of eveteasing against her son. This allegation was made for the first time on the day when they beat the prosecutrix. She has denied that she had gone to Puri on 18th May along with Lekhram and the prosecutrix. She had admitted that the incident of quarrel was compromised in the police station. It is also correct to say that the accused persons had lodged report against them, which ended in a compromise. It is correct to say that had they not lodged report regarding beating, they would also have not lodged report of rape against them.

10. PW-1 Rukmanibai, has also made similar statement. In cross-examination she has admitted that sister of the accused Durga had lodged report of eveteasing against Lekhu and in connection with that report they had gone to police station and compromised there. She and her sister had signed the compromise deed, which was in relation to *marpeet* and this compromise was recorded 2-3 days after the incident of rape of her daughter in the police station and thereafter, they returned their house happily without any dispute. In paragraph 10 of her statement she has admitted that on 18th at about 3.30 her sister Damyantin, her son Lekhu had gone to Puri by Puri Express. Before that they were in the house of her sister (Damyantin) and were preparing for their journey 1-2 hours before their departure. It is correct to say that her daughter was also with them in the house.

11. Defence witness Anand has also stated that he recognizes Rukmanibai, Damyantinbai and the prosecutrix. He works in Railway Canteen. On 18.5.2004 Damyantinbai and Lekhu went to Jagannathpuri by Puri Express from Dongargarh station at 3.30 p.m. The prosecutrix had also accompanied them to Dongargarh station. All the three were with him since 2.15 p.m. He had

obtained reservation for them. Damyantinbai, Lekhuram went by Puri Express at 3.30 p.m., however, the prosecutrix stayed back and he left her up to out of the gate.

12. Thus, from perusal of the statements of Damyantinbai and Rukmanibai it is manifestly clear that after the incident of alleged rape there was some quarrel between the prosecutrix and family members of the appellant as sister of the appellant had made allegations of eveteasing against Lekhrâm, son of Damyantinbai, and ultimately a compromise was arrived at between the parties probably on 21st May as admitted by Rukmanibai in her cross-examination and only thereafter, a report of alleged rape was lodged on 22nd May with Superintendent of Police, Rajnandgaon. In the light of above admission of Damyantinbai and Rukmanibai the explanation given by the complainant for lodging report after four days, does not inspire confidence and it appears that the prosecution witnesses are suppressing some material facts. Version of the defence witness that on the date of incident at about 3.30 p.m. Damyantinbai and her son Lekhu had proceeded by Puri Express and prosecutrix was also present at the station since 2.15 p.m. finds support from the statement of Rukmanibai who has also admitted the above fact in her cross-examination. If that be so, in that case, case of the prosecution that the incident occurred at 2.30 p.m., the prosecutrix narrated the incident to Fagnibai and version of Damyantinbai that after she returned from work in the night, the prosecutrix narrated the incident to her, appear to be doubtful. In this backdrop, if statement of the prosecutrix is examined, it appears to be highly unnatural and improbable that the accused after scaling wall came with rope, wrapped her face, gagged her mouth, took her to other room, tied her hands & legs and committed rape at 2.30 p.m. There is also evidence that a 9 year old girl Anita was present in the house at the time of incident and was sleeping, however, she has not been examined as a witness. The lady Dr. Sushma Kumare (PW-7) who examined the prosecutrix, has not found any injury over her person though she examined her after seven days of the alleged

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incident. She has also opined that the prosecutrix was habitual of intercourse. Moreover, report of the F.S.L. regarding vaginal slides of the prosecutrix is also negative.

13. Thus, from perusal of evidence of the prosecution witnesses and the material available on record, this Court is of the considered opinion that version of the prosecutrix does not inspire confidence. The prosecution has failed to prove the offence beyond reasonable doubt. Fagnibai and Jaini, who are independent witnesses, have not been examined by the prosecution and therefore, adverse inference can be drawn that had they been examined, they would not have supported case of the prosecution.

14. In the result, the appeal succeeds. Conviction of the appellant under Sections 376, 452, 342 of IPC and sentences passed thereon, are set aside. He is acquitted of the above charges. He be set at liberty forthwith, if not required in any other case.

Sd/-
DHIRENDRA MISHRA
Judge